

Assembly Bill No. 1655

CHAPTER 469

An act to amend Section 62.9 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 23, 1999. Filed
with Secretary of State September 23, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1655, Hertzberg. Occupational safety and health standards: variances: assessments.

Existing law authorizes employers to apply to the Occupational Health and Safety Standards Board (the board) for a permanent variance from an occupational safety and health standard, order, special order, or portion thereof, upon a showing of an alternate program, method, practice, means, device, or process that will provide equal or superior safety to employees. Existing law requires the board to issue those variances, after opportunity for an investigation, if it determines on the record, after an investigation where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that certain conditions relating to the safety and health of employees are met.

This bill would require the Occupational Safety and Health Standards Board, on or before April 1, 2000, to report to the Legislature on the nature and the extent of investigations conducted pursuant to those provisions.

Existing law authorizes the levy and collection of assessments from employers to fund the Cal-OSHA targeted inspection and consultation programs. This authorization will be repealed on January 1, 2000, unless extended by statute.

This bill would delete the January 1, 2000, repeal date for the above authorization for employer assessments.

The people of the State of California do enact as follows:

SECTION 1. On or before April 1, 2000, the Occupational Safety and Health Standards Board shall report to the Legislature on the nature and the extent of investigations conducted pursuant to subdivision (b) of Section 143 of the Labor Code.

SEC. 2. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the

programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars (\$250,000) shall be assessed one hundred dollars (\$100).

(B) An employer with a payroll of two hundred fifty thousand dollars (\$250,000) or more, but not more than five hundred thousand dollars (\$500,000), shall be assessed two hundred dollars (\$200).

(C) An employer with a payroll of more than five hundred thousand dollars (\$500,000), but not more than seven hundred fifty thousand dollars (\$750,000), shall be assessed four hundred dollars (\$400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars (\$750,000), but not more than one million dollars (\$1,000,000), shall be assessed six hundred dollars (\$600).

(E) An employer with a payroll of more than one million dollars (\$1,000,000), but not more than one million five hundred thousand dollars (\$1,500,000), shall be assessed eight hundred dollars (\$800).

(F) An employer with a payroll of more than one million five hundred thousand dollars (\$1,500,000), but not more than two million dollars (\$2,000,000), shall be assessed one thousand dollars (\$1,000).

(G) An employer with a payroll of more than two million dollars (\$2,000,000), but not more than two million five hundred thousand dollars (\$2,500,000), shall be assessed one thousand five hundred dollars (\$1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars (\$2,500,000), but not more than three million five hundred thousand dollars (\$3,500,000), shall be assessed two thousand dollars (\$2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand five hundred dollars (\$2,500).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and

private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the



director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

